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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,144	11/14/2003	Steven R. Cosentino	DTG-106US	2366
31344	7590	04/21/2005	EXAMINER	
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1771

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,144

Applicant(s)

COSENTINO ET AL

Examiner

Lynda M. Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10-16 is/are rejected.
- 7) ☐ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/14/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 and 17-19 of copending Application No.10/718334. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter sought in the instant application is fully encompassed by the subject matter claimed in claims 1-4 and 17-19 of 10/718334.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 11-13 of copending Application No.10/820549. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter sought in the instant

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application is fully encompassed by the subject matter claimed in claims 1-3 and 11-13 of 10/820549.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 and 13-16 and rejected under 35 U.S.C. 103(a) as being unpatentable over Benim et al., US 20030003249 A1.

The published US patent application issued to Benim et al., teaches a packaging laminate comprising a facing of a first film layer (13), and a lower melting heat sealable second layer (14). Said facing material is further laminated to an insulating fibrous batt (30) (Figure 2, Section 0022 and 0026). Suitable facing film materials include bi-axially oriented polyester film (Section 0028). With regard to the reinforcing polymer scrim limitations, Benim teaches a variety of suitable fibrous materials such as those made from melt-blown polyolefins, felt or needled fabrics (Section 0022-0025). Though, Benim et al., does not specifically teach the structure of a scrim, scrim structures are commonly non-woven. As such, the Examiner considers the teaching of meltblown polyolefin non-woven fabric sufficient meet the limitation of a reinforcing scrim polymer.

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With regard to claim 2, Benim et al., teaches that the heat sealing second layer (14) has a thickness ranging from .0025 mil to 5 mil. For example 1 mil converts to .001 inches.

With regard to claim 4, Benim et al., teaches providing another heat sealing layer (24) to the bottom surface of the fibrous material (Section 0027). As such, though Benim et al., does not specifically teach that the heat sealing layer is adhesive, said layer functions as adhesive under heat and pressure. As such, with regard to claim 6, the Examiner considers the teaching of a heat sealing layer sufficient to meet the limitation of providing a thermally activated adhesive layer.

With regard to claim 13, Benim et al., teaches that the facing film material is printable (Section 0031).

With regard to claim 14, Benim et al., teaches providing another first layer (22) and another heat sealing layer (24). Benim et al., teaches that under heat and pressure heat sealing layer (24) softens and adheres to the fibrous material (Section 0027).

With regard to claim 16, Benim et al., teaches providing a pressure sensitive adhesive layer (26) to the bottom of first layer (22) (Section 0035). Said adhesive layer is to facilitate application of the packaging composite to a container (Section 0035).

With regard to the recycling limitations, Benim et al., teaches that the packaging composite is wholly recyclable (Section 0010).

With regard to the limitations of providing a thermal bonding polymer layer having a thickness between 10% and 40% of the combined thickness of the film and thermal bonding layer, Benim et al., does not specifically teach the relative ratio between the film layer and the bonding layer, however, it is the position of the Examiner that it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the relative

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thicknesses of each layer based on the desired end use as a packaging label and/or self sealing material (Sections 0035 and 0036). It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

With regard to the tear resistant limitations, Benim et al., fails to teach such a property, however, it is reasonable that said tear resistant property is inherent to the invention of Benim et al. Support for said presumption is found in the use of like materials (i.e., first bi-axially oriented polyethylene terephthalate layer, a lower melting heat sealable layer, and a reinforcing scrim material), which would result in the claimed tear resistant property.

5. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benim et al., US 20030003249 A1 as applied to claim 3 above and further in view of Harrison et al., US 4,844,246.

Benim et al., fails to teach adhering a blister package to the bottom surface of the scrim layer, however, Benim et al., does teach a laminate comprising a facing of a first film layer (13), and a lower melting heat sealable second layer (14). Said facing material is further laminated to an insulating fibrous batt (30) (Figure 2, Section 0022 and 0026). Furthermore, Benim et al., does teach providing a pressure sensitive adhesive to facilitate application to a container. To that end, the patent issued to Harrison et al., teaches a blister tray and at least one sheet comprising an adhesive such that said sheet is capable of coving the tray compartment (Abstract). With regard to the “adapted to” limitations recited in claim 12, it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the

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ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138

With regard to the peelable limitations recited in claim 11, it is the position of the Examiner that any adhesive bearing composite is peelable with enough application of force.

Therefore, motivated by the desire to provide a blister package kit it would have been obvious to one having ordinary skill in the art to employ the packaging self sealing material taught by Benim et al., to cover the compartments of the blister tray taught by Harrison et al. Specific motivation to employ the packaging self sealing material of Benim et al., is found in the desire to expand the number of applications of said material.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,695,503, US 5,626,947

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 16, 2005

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A handwritten signature in black ink, appearing to read "Terrel Morris", with a large, stylized flourish extending from the end.

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700